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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 698

LULA W. GARLAND, TRUSTEE OF GREGORY G. GARLAND, A PERSON INCOMPETENT, AND CAMILLA WELLFORD GARLAND, INDIVIDUALLY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court in ruling on post-verdict motions made by the respective parties (R. 14–20) has not been reported. The opinion of the circuit court of appeals (R. 24–32) is reported in 122 F. (2d) 118.

JURISDICTION

The judgment of the circuit court of appeals was entered July 21, 1941 (R. 32–33). The petition for a writ of certiorari was filed October 13, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an insured under a United States Government life (converted) insurance policy, who exercised the right of

obtaining from the Government the cash-surrender value of the policy upon surrender of the policy, and of all claims thereunder, is entitled to have the surrender set aside and the policy reinstated upon a finding that he was totally permanently disabled and hence entitled to benefits under the policy at the time of the surrender, and that neither he nor the Government were aware of the disability at that time.[1]

STATEMENT

This suit was brought April 28, 1939, by the petitioner, Lula W. Garland, Trustee of Gregory G. Garland, an incompetent, to set aside Garland's surrender to the respondent on February 27, 1933, of a United States Government life (converted) insurance policy in exchange for its cash surrender value and to recover total permanent disability benefits under the policy (R. 1–5, 7–8).[2] The complaint alleged in effect that Garland became totally permanently disabled prior to the surrender of his policy (R. 2), that no claim for benefits by reason of such disability was filed in the Veterans' Bureau until January 2, 1936, nearly three years after the surrender, and that on September 12, 1938, the Administrator of Veterans' Affairs denied the claim on the ground that Garland did not become totally and permanently disabled at any time prior to the cash surrender (R. 4).

The case was tried to a jury. The trial court denied motions by the Government for a directed verdict at the close of the petitioner's evidence and again at the close of all of the evidence (R. 26). The jury in a special verdict upon issues submitted by the court found that Garland was mentally competent to surrender his policy but was totally permanently dis-

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[1] A question reserved for argument if certiorari should be granted, which the court below deemed it unnecessary to decide (R. 27), is whether the district judge committed reversible error in submitting the issue of mutual mistake to the jury over the respondent's objection (R. 11), instead of deciding the issue himself as a matter within the exclusive jurisdiction of equity.

[2] The other petitioner, Camilla Wellford Garland, the wife of the insured and the beneficiary named in the policy, was later joined as an interested party (R. 15).

abled when he did so and that the transaction was entered into under the mistaken belief by both Garland and the respondent that Garland was not totally permanently disabled (R. 14). A motion by the Government for judgment in its favor and in the alternative for a new trial was denied and judgment was entered for the petitioner rescinding the surrender, reinstating the policy, and awarding total permanent disability benefits (R. 20–22). In denying the Government's motion, the trial court held that there was ample justification for the findings of the jury of mutual mistake in respect of the existence of total permanent disability at the time the policy was surrendered and that this was a mistake of fact and hence was a proper basis for rescinding the surrender (R. 18–19). On appeal by the Government the court below reversed and remanded with directions to the district court to set aside the verdict and enter judgment for the Government (R. 32–33).[3]

ARGUMENT

The court below held in effect that the mere fact that the policy is to be regarded as having already matured by total permanent disability prior to its surrender did not entitle the petitioner to the relief sought; and that since there was no mutual mistake going to the essence of the contract, the surrender was not voidable. This conclusion of the court is justified by the nature and purpose of the cash surrender clause in the policy (R. 12B) and of the application for the cash surrender value executed by Garland pursuant to it (R. 13).

The cash surrender clause plainly provided that Garland's right to obtain the cash surrender value of the policy from the Government on demand was conditioned upon the surrender not only of the policy but of "all claims thereunder" and Garland's application for the cash surrender value provided such a surrender (R. 13). Thus the parties by their contract agreed in effect that if and when Garland should elect to surrender his

[3] The sufficiency of the evidence to support the finding of total permanent disability was not questioned by the Government on appeal.

policy for its cash surrender value, that transaction would constitute a release or an accord and satisfaction of all claims arising under the policy at any time. See *Denny* v. *United States*, 103 F. (2d) 960 (C. C. A. 7); *Pacific Mut. Life Ins. Co. of California* v. *Jacob*, 87 F. (2d) 870 (C. C. A. 8). The petitioner, moreover, concedes in effect that a claim, as in the instant case, resulting from the maturity of the policy by total permanent disability could be "satisfied by * * * release supported by adequate consideration, or by an accord and satisfaction" (Pet. 14). There can be no doubt concerning the adequacy of the consideration for Garland's surrender since the transaction was in accordance with the terms of the policy which was manifestly supported by adequate consideration. Moreover, the parties no doubt contemplated when they entered into the insurance contract that receipt of the cash surrender value in a lump sum might under certain circumstances be more beneficial to the insured than total permanent disability benefits which were payable only in installments.

Contrary to the petitioner's contention (Pet. 19–22), the mistake found by the jury concerning the existence of the total permanent disability did not go to the essence of the surrender transaction. The existence of total permanent disability is often a matter of doubt until a finding has been made in administrative or judicial proceedings. See *United States* v. *Patryas*, 303 U. S. 341, 345; *United States* v. *Buzard*, 33 F. (2d) 883, 885 (C. C. A. 9). When the parties entered into the insurance contract, they must therefore have contemplated that total permanent disability might be later found to have existed at the time of the surrender of the policy, although unknown to them at that time. And the provision for the surrender of "all" claims thereunder plainly shows an intention that all claims based on total permanent disability should be surrendered regardless of whether the disability was known to exist at the time of the surrender. Although an assumption that the disability did not exist probably motivated Garland in surrendering the policy, it was plainly not the basis of the

surrender transaction. The policy gave the insured an absolute right to surrender, to which his disability was irrelevant.

A provision in the policy for a final and complete settlement of all claims arising thereunder is beneficial not only to the Veterans' Administration in allowing a more certain and accurate computation of the insurance reserves, gains, losses, and dividends, but also to the other policyholders whose opportunities to obtain dividends would necessarily be diminished if the Administrator of Veterans' Affairs were required to maintain reserves sufficient to meet all claims which might be established at any time under policies which had been surrendered. The Government's position therefore is not inconsistent with the principle of liberality to veterans upon which the petitioner relies (Pet. 27–28).

Moreover the state of Garland's health was not a matter of fact at the time of the surrender of his policy but was merely a matter of opinion and conjecture, a mistake as to which would not be a ground for rescission when it later became evident. Cf. *Chicago & N. W. Ry. Co.* v. *Wilcox*, 116 Fed. 913, 914–915 (C. C. A. 8); *Pacific Mutual Life Ins. Co.* v. *Jacob*, *supra*, p. 873. And see *United States* v. *Buzard*, *supra*, pp. 885, 886, relied on by the court below (R. 30).

In any event, the respondent could scarcely have been regarded as having acted under a mistake, since it paid Garland the cash-surrender value under an absolute obligation to do so (Cf. *Lipman* v. *Equitable Life Assur. Soc.*, 58 F. (2d) 15, 18 (C. C. A. 4) and *Pacific States Life Ins. Co.* v. *Bryce*, 67 F. (2d) 710, 712 (C. C. A. 10)), and without any knowledge concerning his condition or any duty or even right to investigate it.[4] See *Grymes* v. *Sanders*, 93 U. S. 55, 60.

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[4] The decisions relied on by the petitioner as in conflict with the decision of the court below with respect to the question of mutual mistake (Pet. 24–26) are readily distinguishable from that decision. In each of those cases the transactions viewed as subject to rescission for mutual mistake were clearly enterd into upon the basis that the insured was not totally permanently disabled on the date in question. Mistake, therefore, as to the existence of total permanent disability on that date manifestly went to the essence of the transaction. Here, there was no such mutual mistake, since

In *United States* v. *Arzner,* 287 U. S. 470, upon which the petitioner relies (Pet. 15–19), this Court was concerned solely with the effect of the surrender of converted policies for cash upon the exercise by the insured of the right granted him by Section 307, World War Veterans' Act, 1924, as amended, 38 U. S. C., sec. 518, to elect to claim total permanent disability benefits under his prior policy of term insurance. The circuit court of appeals had stated *obiter* that the surrender "no doubt" included "any rights which the veteran might have" under the surrendered policy. *United States* v. *Arzner,* 57 F. (2d) 488, 490. The petitioner concedes that this Court, in affirming the judgment, did not express a contrary view (Pet. 17). Her contention that such a view may be implied from its holding must be measured against the fact that here petitioner claims under the surrendered policy itself. Moreover, the specific statutory provision construed in the *Arzner* case has no application here.

The reasoning underlying petitioner's contention relating to the effect of the *Arzner* case is substantially similar to that advanced in Administrator's Decision, Veterans Administration No. 187, upon which petitioner relies in his supplemental brief. We think that the Administrator's decision was equally in error. It will be noted, in any event, that until the *Arzner* decision, the administrative practice conformed to the holding of the court below in the instant case (Pet. Supp. 4–5, 9). The practice was changed by the Administrator's decision in the belief, erroneous we contend, that the *Arzner* case compelled the change even in situations like the present. In these circumstances, since the Veterans' Administration issued its decision in order to conform its practice to what it thought were the compulsions of the *Arzner* case, the Administration "cannot be deemed to have bound itself by this change." *Helvering* v. *Hallock,* 309 U. S. 106, 121, n. 8, cf. *Estate of Sanford* v. *Commissioner,* 308 U. S. 39, 52.

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the United States was under a duty to pay the surrender value whatever petitioner's condition.

CONCLUSION

The decision of the court below was correct and is not in conflict with any other court decisions. We respectfully submit that the petition should be denied.

WARNER W. GARDNER,
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